

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DENNIS ALLEN, MARY JANE
CRACRAFT, LELAN LITTRELL and
GLASS, MOLDERS, POTTERY, PLASTIC
AND ALLIED INDUSTRIAL WORKERS,
LOCAL NO. 41, AFL-CIO,

Plaintiffs,

vs.

LEONARD D. KRISTAL, and JOHN L.
CRARY,

Defendants.

JOHN L. CRARY,

Cross-Claimant,

vs.

LEONARD D. KRISTAL,

Cross-Defendant.

JOHN L. CRARY,

Third-Party Plaintiff,

vs.

POLLY JONES, SHIRLEY MONROE,
JAMES THELAN,

Third-Party Defendants

Case No: C-1-01-159

Judge Herman J. Weber
Magistrate Judge Timothy S. Hogan

DEFENDANT JOHN L. CRARY'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR ORDER.

Defendant John L. Crary, by and through his counsel, hereby respectfully submits his
Opposition to Plaintiffs' motion for order respecting Plaintiffs' re-filed summary judgment motion
and memorandum of points and authorities in support thereof. This Opposition is based upon the

1 following Memorandum of Points and Authorities and all other pleadings and papers on file or to
2 be filed in support of this Opposition and upon such other and further argument as may be
3 presented at any hearing of this matter.

4 **MEMORANDUM IN OPPOSITION**

5 On or about November 20, 2003, Plaintiffs re-filed their motion for summary judgment and
6 memorandum of points and authorities in support of such motion. At the same time, Plaintiffs filed
7 a “motion for order” essentially asking this Court to “deem” their re-filed summary judgment
8 papers as being filed on November 10, 2003, rather than November 20, 2003.

9 Defendant Crary hereby writes only to object to any reference to Plaintiffs’ summary
10 judgment papers as being “properly filed.” Crary submits that Plaintiffs’ motion is outside this
11 Court’s amended scheduling order and therefore late whether filed on November 10, 2003 or on
12 November 20, 2003.

13 Crary filed his motion for summary judgment on October 15, 2003 in accordance with this
14 Court’s amended scheduling order. Plaintiffs and Third-Party Defendants filed a raft of pleadings
15 on November 10, 2003, all untimely under this Court’s amended scheduling order. Two days after
16 Plaintiffs’ and Third-Party Defendants’ untimely filings this Court denied Third-Party Defendants’
17 motion to extend the dispositive motions cutoff date.

18 Plaintiffs seem to interpret the Court’s inaction on their motion as license to wait for a
19 ruling. It is clear however that the amended scheduling order of this Court is, and always has been,
20 firmly in place until modified. Without modification; without a ruling on Plaintiffs’ motion, the
21 amended scheduling order is the order of this Court and, Crary submits, should be followed. In the
22 absence of this Court granting Plaintiffs’ motion to continue the date in the amended scheduling
23 order, Plaintiffs should have respected the Court’s scheduling order.

24 But they did not. They filed a raft of pleadings, all of which were late. Even the opposition
25 to Crary’s motion for summary judgment was late, despite Plaintiffs’ assertions otherwise. The
26 amended scheduling order clearly requires any opposition to a dispositive motion to be filed within
27 20 days. Crary brought his motion for summary judgment on October 15, 2003, in accordance
28 with the scheduling order. Plaintiffs’ opposition was due 20 days later, on November 4, but

1 Plaintiffs instead filed their opposition November 10, 2003, 6 days later. And all three motions for
2 summary judgment filed by Plaintiffs and both Third-Party Defendants were filed 26 days late.
3 Crary does not like making procedural arguments of this sort, but Plaintiffs' disregard for this
4 Court's orders is baffling and Crary was disadvantaged by being forced to try to "interpret" the
5 amended scheduling order to determine when his reply and oppositions would be due.

6 For these reasons, Crary respectfully submits that Plaintiffs' summary judgment papers
7 were filed late, whether they are "deemed" filed on November 10, 2003 or November 20, 2003.
8 Therefore, Crary submits, this Court should refuse to hold that the summary judgment papers were
9 "properly" filed.

10 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2003, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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